

**FILED****MAY 12 2016**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY

UNITED STATES OF AMERICA §  
ex rel. James Brooks, §  
Plaintiff, §

v. §

JEFFREY ORMSBY, et al., §  
Defendants. §

Civ. A. No. 1:16-cv-00033-SS \*SEALED\*

**FILED UNDER SEAL**

**UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION**

Relator James Brooks, a pro se inmate at the Federal Correctional Institution – Bastrop, filed this qui tam action on January 19, 2016 [Dkt. #1], but did not serve his Complaint or Motion to Seal on the United States. Upon learning of the existence of this lawsuit, the United States obtained the Complaint and reviewed the relator's allegations.

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Generally speaking, the False Claims Act allows a relator to maintain a declined qui tam action in the name of the United States, and provides that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” 31 U.S.C. § 3730(b)(1). The United States notes, however, that a pro se relator may not prosecute a qui tam action because the United States remains the real party in interest, even when it has declined to intervene. See U.S. ex rel. Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1125-28 (9th Cir. 2007); Timson v. Sampson, 518 F.3d 870, 872-874 (11th Cir.2008); U.S. ex rel. Mergent Services v. Flaherty, 540 F.3d 89, 92-94 (2d Cir. 2008); see also Safir v. Blackwell, 579 F.2d 742, 745 n.4 (2d Cir.1978); U.S. v. Onan, 190 F.2d 1, 6

(8th Cir.1951); U.S. ex rel. White v. The Apollo Group, Inc., 2006 WL 487853, \*3 (W.D. Tex. Jan. 6, 2006). At this time, the United States takes no position as to whether this action should be dismissed due to the relator's pro se status. The United States does not oppose a reasonable extension of time for the relator to secure attorney representation.

The United States requests that, should either the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that orders issued by the Court be sent to the government's counsel. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator's action or claim. The United States also requests that it be served with all notices of appeal.

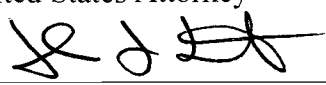
Finally, the United States requests that the relator's Complaint, this Notice, and the attached proposed Order be unsealed. A proposed order accompanies this Notice.

Date: May 11, 2016

Respectfully submitted,

RICHARD L. DURBIN, JR.  
United States Attorney

By:

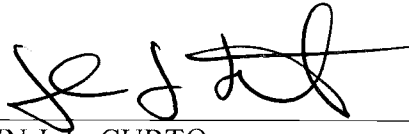
  
\_\_\_\_\_  
JOHN J. LoCURTO  
Texas Bar No. 24073750  
Assistant United States Attorney  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
Tel: (210) 384-7362  
Fax: (210) 384-7322  
Email: john.locurto@usdoj.go

**CERTIFICATE OF SERVICE**

I certify that, on May 11, 2016, I caused the foregoing Notice to be served on relator via

CERTIFIED MAIL as follows:

James Brooks  
39327129  
FCI Bastrop  
P.O. Box 629  
Bastrop, TX 78602

A handwritten signature in black ink, appearing to read 'John J. LoCurto', is written over a horizontal line.

JOHN J. LoCURTO  
Assistant United States Attorney

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

UNITED STATES OF AMERICA  
ex rel. James Brooks,

Plaintiff,

v.

JEFFREY ORMSBY, et al.,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civ. A. No. 1:16-cv-00033-SS

**DECLINATION AND UNSEALING ORDER**

The Court, having noted that the United States declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), enter the following orders:

IT IS ORDERED that,

1. the complaint and all filings in this action be unsealed and served upon the defendant by the relator within \_\_\_\_ days of the date of this Order;
2. the seal be and hereby is lifted as to all matters occurring in this action, both before and after the date of this Order;
3. the relator shall notify the court within \_\_\_\_ days of the date of this Order whether the relator has secured attorney representation in this action;
4. the parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause shown, at any time;
5. the parties shall serve all notices of appeal upon the United States;

6. all orders of this Court shall be sent to the United States; and that

7. should the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States before ruling or granting its approval.

IT IS SO ORDERED.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2016

---

HON. SAM SPARKS  
UNITED STATES DISTRICT JUDGE